IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5047 OF 2004

Shri.J.S.Bhat ..Applicant

Vs.

Shri.Amrit A.Rajvanshi
& Anr. ..Respondents

...

Mr.J.S.Bhat in Person present for applicant
Mr.M.S.Mhambaray,A.P.P. for the State
Mr.Ajit Singh Rajvanshi for Amrit Rajvanshi

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 18,2005

P.C.

1. Heard Mr.J.S.Bhat in person for the applicant, Mr.Ajit Singh Rajvanshi in person for Amrit Rajvanshi and the learned A.P.P. for the State.

2. The applicant is eeking quashing of process issued by the learned Magistrate, 43rd Court, Borivali Mumbai in C.C.No.893/S/2002. In the said case, process is issued under Section 138 of

Negotiable Instruments Act. The applicant has preferred application before the learned Magistrate. The learned Magistrate rejected the said application. Now in view of the observations of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal; [2004(4) Mh.L.J.274],** it is clear that the Magistrate has no power to recall the process issued by him. Hence, I am not inclined to interfere with the order of the learned Magistrate rejecting the application for recall of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer

the necessary revision before the concerned Sessions Court. The applicant makes a statement that the necessary revision will be preferred within four weeks from today. In view of the statement, the trial Court shall not proceed with the trial for a period of four weeks. Mr.Ajit Singh for respondent no.1 fairly makes a statement that no objection will be raised in respect of delay in filing the revision.

5. It is made clear that revision will be preferred in respect of the order of the Magistrate issuing process against the applicant and not in respect of the order of the Magistrate rejecting the application for recall of the process.

6. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Criminal Application is disposed of.

[V.K.TAHILRAMANI,J.]